UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

WYETH PHARMACEUTICALS (BIOPHARMA)

Employer [1]

and Case 14-RC-12427

BREWERS AND MALSTERS, LOCAL UNION NO. 6, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Wyeth Pharmaceuticals (Biopharma), has a facility in St. Louis, Missouri, where it is engaged in the manufacture and nonretail sale of biologicals used in the treatment of hemophilia. The Petitioner, Brewers and Maltsters, Local No. 6, affiliated with the International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time employees in the maintenance department at the Employer's St. Louis facility. A hearing officer of the Board held a hearing and the parties filed briefs.

As evidenced at the hearing, the parties disagree on the scope of the unit. The Petitioner seeks a unit limited to the 24 maintenance employees. The Employer contends that a maintenance unit is inappropriate and the only appropriate unit is one which includes the production, maintenance, and engineering employees. I have considered the evidence and the arguments presented by the parties on this issue and I have concluded that the petitioned-for

[1] The Employer's name appears as amended at hearing.

maintenance unit is appropriate. Accordingly, I have directed an election in the petitioned-for unit, which currently consists of 24 maintenance employees.

I. ORGANIZATIONAL STRUCTION AND OPERATIONS

The Employer is part of a larger organization known as Wyeth Corporation. Wyeth Corporation has three divisions: Animal Health, Consumer Products, and Wyeth Pharmaceuticals. The Employer is one of the business units within Wyeth Pharmaceuticals. The Employer also has one other facility in the United States in addition to the facility in St. Louis, and that facility is located in Andover, Massachusetts. While three Wyeth Corporation subsidiaries are unionized and have units of production, maintenance, and engineering employees, there has been no history of bargaining at either of the Employer's St. Louis, Missouri or Andover, Massachusetts facilities.

The Employer's St. Louis facility produces Recombinant Factor 8, a biological drug used to treat hemophilia. The Factor 8 molecule is produced as a bulk substance from living organisms or cells. These cells are cultured in bioreactors, sterile vessels with specific parameters controlling the inside environment of the vessels, including temperature, pressure, and pH requirements. Once the Factor 8 molecule is produced, it is collected and purified and put into bottles that are frozen, and then sent to the warehouse. The product is then shipped from the warehouse to Sweden or Spain for further processing. The growth of cell cultures is strictly controlled by the FDA and the federal rules contained in C.F.R. 21 on the production of drug substances.

The Employer began its operations in St. Louis in 1998 with 6 employees and currently has a total of 408 employees. There are 92 hourly production employees, 24 maintenance employees, and 12 engineering employees. The St. Louis facility operates continuously with three shifts, except for annual plant shutdowns. The St. Louis operations are divided into four major groups: Engineering Services, Manufacturing, Technical Services, and Site Quality. Each of these four groups has a separate director, all of whom report to Managing Director Jim

Miller, the highest-ranking individual at the St. Louis facility. The Employer argues that all the employees in the Engineering Services Group, which includes the maintenance employees, and in the Manufacturing Group should be included in the unit. The Employer contends these production, maintenance, and engineering employees share a substantial community of interest and comprise a functionally integrated group of employees who are all part of the process of providing the Employer's product. The Petitioner argues the maintenance employees are a separate, readily identifiable, functionally distinct group of employees, with no history of bargaining in a larger unit, and constitute a presumptively appropriate unit.

A. Engineering Services

The 36 hourly employees in the Engineering Services Group, including the 24 maintenance employees, are under the overall supervision of Engineering Services Director Steve Miller, who reports to Managing Director Jim Miller. Engineering Services is divided into three departments: (1) Facilities Engineering, (2) Engineering Operations, and (3) Equipment Validation. Each of these three departments has a separate manager who reports to Engineering Services Director Steve Miller. None of these supervisors have any supervisory authority over the production employees in the Manufacturing Group.

1. Facilities Engineering

Facilities Engineering is split into two separate sections, Facilities and Metrology. The 24 maintenance employees work in the Facilities section. The supervisory hierarchy of the maintenance employees consists of three maintenance supervisors, one for each shift, Facilities Manager John Farmer, and Associate Director of Facilities Chuck Conklin, who in turn report to the Engineering Services Director Steve Miller. There are no production employees in the Facilities section. The three maintenance classifications in the Facilities section are maintenance mechanic, senior maintenance mechanic, and lead maintenance mechanic. There are 4 maintenance mechanics, 17 senior maintenance mechanics, and 3 lead mechanics, 1 on each shift. While the human resources manager testified there is a fourth classification,

assistant maintenance mechanic, the Employer has hired no employees in this classification and none of the Employer's Exhibits refer to such a classification. The maintenance employees work out of a temporary trailer, referred to as T-5, located next to the manufacturing building, B-2. The Employer has begun construction to expand B-2, which is expected to be completed in 2005 or 2006. Upon completion, the maintenance employees will be located in a separate area within B-2.

The maintenance employees currently report to the maintenance trailer, T-5, to receive their work assignments from the maintenance supervisors. The maintenance trailer is also where the maintenance employees have their lockers. There is also a maintenance shop located in B-2 where the dedicated maintenance tools are kept, which is access-controlled. Production employees do not have access to the maintenance shop unless they are on the Emergency Response Team, which is a group of employees who respond to minor emergencies throughout the facility. The record does not reflect the number of production employees on the Emergency Response Team or the frequency of their access to the maintenance shop. The maintenance shop in B-2 contains eight toolboxes, some workbenches, lathes, hand mills, welding equipment, electrical tools, drill presses, and some parts in storage. The maintenance employees are the only employees who use the tools in the maintenance shop and are the only employees who work out of the trailer. While Facilities Manager Farmer testified that engineering employees have access to the maintenance shop, the record fails to reflect which engineering employees have access, what the purpose of such access is, or how frequently they access the shop.

Maintenance employees are responsible for the repair, installation and maintenance of the physical buildings and the production machinery. There are 9 buildings on the 13 acre site, some of which are owned by the Employer and some of which are leased. About 15 percent of the maintenance employees' time is spent on general building maintenance such as changing light bulbs and filling potholes. Approximately 75 to 80 percent of their time is spent on

maintaining and repairing machinery. Approximately 60 percent of this time is spent on machinery in B-2, 20 percent on the boilers in B-1, which houses laboratories and quality control personnel, and the other 20 percent on the machinery in the rest of the buildings. Maintenance employees spend approximately 5 percent of their time in the maintenance shop.

Two to three maintenance employees on each shift are designated as the Engineer on Duty, which is a rotating assignment. The Engineer on Duty visits all the buildings at the site checking the physical building and various equipment, including the chillers to make sure there is an adequate chilled water supply, the pressure of the boilers which supply the steam used to heat the buildings and to sterilize aseptic processing equipment, and the air compressors. The Engineer on Duty also checks the electrical systems, the plumbing, and the water injection equipment used to supply sterilized water. The Engineer on Duty responds to alarms indicating a breakdown of machinery or a malfunction requiring immediate attention, and to calls from employees from various other departments for repairs on either machinery or the physical facilities.

All the maintenance employees, including the Engineer on Duty, handle work requests and preventative maintenance procedures, which they receive at the maintenance trailer, T-5. Work requests are requests for the repair of machinery or the physical plant buildings and can come from any department or building. They are prioritized in order of the importance of the repair. Preventative maintenance procedures are performed on all machinery to help insure critical machinery does not break down unexpectedly. Preventative maintenance procedures are scheduled to be performed on certain equipment within a specified period of time. Maintenance employees may also help the Engineers on Duty repair major breakdowns that require more than one maintenance employee, such as the breakdown of an air handler motor. Maintenance employees are also generally assigned the discrepancy investigation reports (DIRs), which are investigations into why a machine did not operate properly or according to standard operating procedures.

The other section in the Facilities Engineering department is Metrology. There are six employees in Metrology, one employee classified as a metrology lead, and five classified as senior engineering technicians, all of whom report to Metrology Manager Jeff Wester. Metrology employees are responsible for calibrating various instruments and controls used in production. Metrology employees shut down or isolate the instrument that needs to be calibrated and take it to a testing station to perform the calibration. The actual readings on the instrument gauges are calibrated against a known standard, and then the appropriate adjustments are made to the gauges. The instrument is then reinstalled. Maintenance employees may help reinstall the instrument after it has been calibrated, though the record does not reflect how frequently this occurs.

Metrology employees have their own shop in B-2, at the opposite end of the building from the maintenance shop. They do not work in the maintenance trailer. None of the maintenance employees have performed metrology work, nor is there any evidence that metrology employees have been assigned to perform maintenance work.

2. Engineering Operations

Engineering Operations is the second department in the Engineering Group. This department consists of two CADD technicians, one of whom is an engineering technician and one of whom is a senior engineering technician. These two CADD technicians report to the manager of Engineering Services, who is under Associate Director of Engineering Operations Harold Crader. Crader reports to Engineering Services Director Steve Miller. These two engineering technicians are responsible for programming equipment and revising hardware. They take measurements on equipment and enter this data into computers to generate drawings and site layouts used to illustrate machines and equipment for reference by production, maintenance and validation employees, and the FDA. The engineering technicians revise and update the data and drawings. The record does not reflect where these technicians work, though building B-3 is described as the data center for “engineering” employees.

3. Equipment Validation

The third department in the Engineering Services Group is Equipment Validation. There are three technicians in this department, one engineering technician and two classified as senior engineering technicians. These three validation technicians report to two immediate supervisors who in turn report to Equipment Validation Manager Mike Osborne. These engineering technicians use special tools to set up instruments to monitor the equipment being validated. The engineering technicians run a series of technical, mechanical, electrical, and other tests on the equipment to verify or confirm the equipment is functioning properly. The record does not reflect where these technicians work. There is no evidence that maintenance employees validate equipment, or that validation employees have been assigned to perform maintenance work.

A. Manufacturing Group

The Manufacturing Group is the second group of employees, in addition to the Engineering Group described above, whom the Employer contends should be included in the unit. The 92 hourly employees in the Manufacturing Group are under the overall supervision of Mark Bell, the Director of Manufacturing. The Manufacturing Group is divided into three major areas or departments: (1) Production Support, (2) Production Process – Refacto AF and Manufacturing, and (3) Materials Management. Each of these departments has layers of separate supervision. All of the production employees in the Manufacturing Group, except for those in Materials Management, are divided into four classifications: assistant process technician, process technician, senior process technician, and training technicians. There are currently 9 assistant process technicians, 56 process technicians, 18 senior process technicians, and 4 training technicians. The production employees in Materials Management are classified as materials handler or senior materials coordinator, with four materials handlers and one senior materials coordinator.

1. Production Support

The Production Support department in Manufacturing consists of 38 hourly employees who are under the overall supervision of the Production Support manager. Production Support is divided into two sections: Facilities Cleaning and Buffer. The supervisory hierarchy for the employees in the Facilties Cleaning section consists of five immediate supervisors and one lead supervisor. The supervisory hierarchy of the Buffer employees consists of four immediate supervisors and one lead supervisor.

The job postings contained in Employer Exhibit 11 reflect that Facilities Cleaning employees are responsible for cleaning, mopping, and disinfecting processing and production support work areas. The job postings also reflect that Buffer employees are responsible for preparing chemical batches according to documented batching procedures. These duties include weighing dry chemicals according to batch records, blending batches of "buffers", testing buffers for pH and conductivity using meters, monitoring batch parameters "PLC" systems, documenting and investigating discrepancies in batch procedures, and dispensing prepared buffers. The Buffer section also has an area known as "Staging". Staging employees are responsible for the order, inventory and receipt of storeroom inventory and materials, and for the input, reporting, and adjustment of production materials/components stored and prepared in production.

2. Production Process: Refacto AF and Manufacturing

Refacto AF (Albumin Free) and Manufacturing are the two production processing departments. The record does not reflect how or if Refacto AF differs from Manufacturing. Managing Director Jim Miller testified there were two production processes, one involving purification, and the other involving the growing of cell cultures. Neither of these processes is described in detail, nor does the record reflect which of these two production processing departments is the purification process and which is the cell culture process, or whether Refacto

AF and Manufacturing both have a purification and a cell culture process. Managing Director Jim Miller testified that production employees focus on operating, maintaining and monitoring the bioreactors, controls, column controllers, and chromatography columns in the production process. The job postings in Employer Exhibit 11 contain one posting for a technician in cell culture. This posting describes the duties of these process technicians as being responsible for general cell culture activities, including pre-culture, operation of large-scale production bioreactors, and harvest collection through initial production recovery. These process technicians must also assist with process troubleshooting and problem solving.

Refacto AF consists of 15 production employees who have two immediate supervisors, both of whom report to the Refacto AF manager. These 15 production employees include four technician trainers, two classified as Training Tech I and two as Tech Trainer II. These four trainers report to a Training Coordinator who in turn reports to the Refacto AF manager. These training technicians train the production employees. There is no evidence that they also train maintenance employees. Manufacturing consists of 34 production employees who have 6 immediate supervisors, all of whom report to a manufacturing supervisor. The manufacturing supervisor reports to the associate director of manufacturing. The Refacto AF manager and the associate director of manufacturing both report to Manufacturing Director Mark Bell.

3. Materials Management

There are five hourly production employees in the Materials Management department of the Manufacturing Group, four are materials handlers and one is a senior materials coordinator. These five employees report to two materials management supervisors, who in turn report to the associate director of materials management. The job postings in Employer Exhibit 11 describe the materials handler's duties as shipping and receiving raw materials, samples and products, transporting materials, and stocking the appropriate warehouses.

II. APPROPRIATENESS OF MAINTENANCE UNIT

In deciding the appropriate unit, the Board first considers the Union's petition and whether the unit sought is appropriate. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The Board's declared policy is to consider only whether the unit request is "an" appropriate unit, even though it may not be the "most" appropriate unit. *Black & Decker Mfg. Co*., 147 NLRB 825, 826 (1964). It has been the Board's longstanding policy to find separate petitioned-for maintenance units appropriate in the absence of a more comprehensive bargaining history and where the maintenance employees have the requisite community of interest. *Capri Sun, Inc.,* 330 NLRB 1124 (2000); *American Cyanamid Co*., 131 NLRB 909 (1961).

In determining whether the requisite community of interest exists among the maintenance employees, the Board considers such factors as the degree of functional integration, employee skills, interchangeability and contact among employees, common supervision, similarities in wages, hours, fringe benefits and other working conditions, and bargaining history. *Ore-Ida Foods, Inc*., 313 NLRB 1016, 1019 (1994); *Franklin Mint Corp*., 254 NLRB 714, 716 (1981). The Board will find maintenance units appropriate, despite some degree of functional integration, where the employees possess skills unique to their job classification, are separately supervised, receive the higher hourly wages, and are assigned work under a unique work order system. *Ore-Ida Foods*, supra at 1019 fn. 3. In applying this case law, I find, contrary to the Employer, that the maintenance employees share a significant community of interest with one another and constitute a distinct and appropriate unit.

A. Functional Integration

Maintenance employees are arguably functionally integrated with production employees because they are responsible for the maintenance and repair of the physical facilities as well as for the equipment used by the production employees. There is also some overlap in training. The maintenance employees and the production employees both receive training on core Good Manufacturing Practices (GMPs), including access procedures for entering buildings. Maintenance and production employees also receive training on core health and safety issues,

including safety orientation and fire prevention. Employer Exhibit 11 also reflects there are some general competencies shared by the maintenance and production employees. Exhibit 11 lists 20 general functional competencies for maintenance employees and 33 general functional competency requirements for the production employees, 12 of which are the same for both groups.

The primary functional duties of the maintenance employees and the production employees, however, are very distinct. Maintenance employees have 37 different specific competency requirements, only one of which, the monitoring of thermal units, is the same for production employees. These specific competency requirements include monitoring the purified water system; hot work permit procedure; cutting and welding; operation and monitoring of the compressed air system; and monitoring of HVAC systems. Production employees have 98 different specific competency requirements, with only the one competency, on monitoring thermal units, in common with maintenance employees. The functionally specific competencies for production employees include operation of the universal bioreactor control system; production cell bank access; vial storage and removal; determination of cell density and viability; investigation and inactivation of contaminated vessels; and weighing production chemicals and components. Maintenance and production employees have dedicated trainers who train them on these specific functional competencies. More significantly, maintenance employees are not trained on the specific production competencies and therefore cannot be assigned this work. Similarly, production employees are not trained on the specific maintenance competencies and are not assigned such work.

Production employees do perform some limited preventative maintenance work with the only record example being maintenance on a chromatography skid. The record reflects preventative maintenance on this skid involves installing filters and then removing the filters, and applying and then removing a manifold. This preventative maintenance work is classified as *production* work and has never been assigned to, or performed by, maintenance employees.

Production employees do use tools shared by the maintenance employees that are located in B-2, but these are separate from the maintenance tools kept in the access-controlled maintenance shop. The production employees use screwdrivers, pipe wrenches, crescent wrenches, and pliers. The more difficult, complex maintenance work, however, is performed by the maintenance employees. Thus, while production employees do perform some preventative maintenance on at least one piece of equipment, this work is generally less skilled work. The overlap of lesser skilled duties does not negate the separate identity of the petitioned-for maintenance unit. *Burns & Roe Services Corp*., 313 NLRB 1307, 1309 fn. 11 (1994).

Production employees also help with maintenance work during plant shutdowns. The only specific example of this assistance on the record was the 2002 shutdown when 5 to 10 production employees acted as "gophers" for 1 week of the 6-week shutdown, cleaning around air handlers and obtaining various parts for the maintenance employees.[2] The production employees did not repair, install, or rebuild machinery, perform preventative maintenance procedures, or handle work requests. The work performed by the production employees during the 2002 shutdown was unskilled and peripheral to the regular repair work performed by the maintenance employees and does not require the inclusion of the production employees in the unit. See *Ore-Ida Foods, Inc*., supra at 1020.

Maintenance employees are involved in the water injection system which is used in the production process. This work, however, is classified by the Employer as *maintenance* work and production employees are not trained on this system nor are they assigned to perform this work. Maintenance employees create the purified water that is used for keeping the cells sterilized throughout the production process and for cleaning the vessels that hold the cells. Maintenance

[2] The Petitioner argued at hearing and in its brief that the Employer failed to produce records showing time spent by production employees in performing tasks for the maintenance employees during the plant shutdown in response to paragraph 11 of the Petitioner's subpoena. The Petitioner, however, made no formal motion for the production of these documents on the record. Such documents are not necessary, in any event, because the record reflects production employees do not perform any skilled maintenance during plant shutdowns.

employees purify the water for the injection system by running city water through a softener, a filter, a deionizer, and a pressure still. The maintenance employees also add hydrochloric acid to the water to balance the pH. The production employees, however, operate the valves on the water injection system and are the ones who meter the purified water into the vessels. Maintenance employees do not grow or harvest the cell cultures themselves. This segregation of actual work functions between maintenance, production, and engineering employees limits the extent to which the production operations depend on the maintenance employees. See *Sundor Brands, Inc.,* 334 NLRB No. 100, slip op at 5 (2001). Further, employees who maintain water systems and pH systems have been considered maintenance employees and included in maintenance-only units. See *Sundor Brands, Inc.*, supra slip op at 3.

Similarly, the functions of the other Engineering Group employees, the Metrology, Validation, and Engineering Operation employees, are distinct from those of the maintenance employees. There is no evidence that the maintenance mechanics and metrology employees are cross-trained to perform each other's job functions, or that the maintenance employees are cross-trained with the Validation or Engineering Operations employees. There is no evidence maintenance mechanics perform the work of the employees in Metrology, Validation, or Engineering Operations, or that any of these employees perform maintenance work. With respect to the Metrology employees who are also in the Facilities department, the Board has found maintenance employees to constitute a group separate and distinct from metrology employees. See *Aerospace Corp*., 331 NLRB 561, 566, 571-72 (2000).

B. Distinct skills

Maintenance employees are highly skilled employees whose skills differ significantly from those of the production and engineering employees. All but four of the maintenance employees are either senior maintenance mechanics or lead maintenance mechanics, which are the more highly skilled maintenance positions. Facilities Manager John Farmer acknowledged the maintenance employees are "differently skilled" from the production

employees. Although the skill level among the maintenance employees is varied, all the maintenance employees can perform any of the maintenance functions, from changing a light bulb to troubleshooting on complex manufacturing equipment. The fact that maintenance employees are not all craftsmen but exercise a variety of maintenance skills does not detract from the separate identity of the maintenance employees. *Grace Chemical Co.*, 120 NLRB 1338, 1341 (1958).

The Employer's job postings for maintenance mechanics as listed in Employer Exhibit 11 define the responsibilities of this position as monitoring, operating, and maintaining high-pressure steam boilers, distillation equipment, computer-controlled HVAC systems, refrigeration and other utilities. These job postings acknowledge that maintenance mechanics must perform tasks "requiring the highest level of skill and experience." Maintenance employees are also required to have strong problem solving skills, and strong electrical and/or HVAC skills.

While maintenance employees do not have a formal apprenticeship program, the Employer requires or prefers they obtain a Class I Stationary Engineering license which involves extensive specialized training. This license allows the maintenance employee to operate pressurized equipment, boilers, chillers, and larger building equipment. Employees typically go through a 1-year training course at a technical school and then a licensing test consisting of an oral exam and five written tests on steam generation, pumps, engines, refrigeration, and electrical generation. Each of these written tests takes 1-1/2 to 3 hours to complete. Maintenance employees who are hired without this license are expected to obtain it. The human resources manager testified that maintenance employees who do not obtain this license would probably not be eligible for promotion to the position of senior maintenance mechanic. The human resources manager also testified that while the Employer has hired senior maintenance mechanics who did not have this license, they did so because the applicants had "extensive" related experience. Seven of the seventeen senior maintenance mechanics currently have this license, and all three of the lead maintenance mechanics have it.

The Employer also requires maintenance applicants to have experience and technical education. Again, the job postings for maintenance mechanics in Exhibit 11 state the Employer requires the applicant to have at least 2 years experience for a maintenance mechanic in the operation of critical plant systems, have prior experience in biotechnology or a pharmaceutical environment, and be a Technical School graduate. Senior maintenance mechanics are required to have 3 years experience in the operation of critical plant systems, and lead maintenance mechanics are required to have 5 years.

Production employees, by contrast, are required to have very different skills and experience in biology and/or chemistry. Employer Exhibit 16 indicates the associate process technicians are only required to have a high school diploma or GED with no specialized schooling or experience. Similarly, materials handlers are only required to have a high school diploma or GED. Exhibit 16 reflects that process technicians are required to have an Associate's or Bachelor's degree, or related industry experience. Job postings in Employer Exhibit 11 more specifically define the requirements for process technicians as having a 1-year certificate from a college or technical school, or 3 to 6 months related experience.

More complex skills and higher education are expected of the senior process technicians. The manager of human resources testified that these employees are required to have a 4-year Bachelor's degree in Biology or Chemistry. Some of the job postings for senior process technicians state the applicants must have a BA or a BS degree in Biology or Chemistry, *and* 3 or more years experience in cell culture. Other job postings for this position state the applicant must have a BA or a BS degree in Biology or Chemistry, *or* 1 to 2 years experience. Unlike the maintenance employees, neither the production employees nor the engineering employees in the Metrology, Validation or Engineering Operations departments, are required to have a Class 1 Stationary Engineering license, nor do any of them possess such a license.

Not only do the skills of the maintenance employees differ from those of the production employees, but they also differ from those of the engineering employees. The engineering employees in Metrology are required to perform calibrations on instrumentation and controls, none of which is performed by the maintenance employees. Job postings in Exhibit 11 require the senior and lead engineering technicians in Metrology to have 4 to 6 years in Metrology or Instrumentation in a regulated industrial setting. An Associate degree in Instrumentation, Process Control, Electronics, or Metrology is desired, as is experience with a particular calibration management database. These skills and requirements are unique to Metrology and are not required of the maintenance mechanics. The record does not reflect the particular requirements for the engineering employees in the Validation or Engineering Operations departments.

B. Employee Interchange\Contact

The difference in the functions and skills of the maintenance employees and those of the production and engineering employees is reflected in the minimal interchange between these employees. As previously noted, production employees are not assigned to perform maintenance work, and maintenance employees are not assigned to perform production work. Maintenance employees are trained on very unique functional competencies which production employees are not trained on, and therefore cannot perform. No maintenance employees have transferred, temporarily or permanently, to production. The assistance provided by a few production employees during one annual shutdown does not constitute a temporary transfer, nor does such assistance mandate the inclusion of the production employee in the maintenance unit. See *Ore-Ida Foods*, *Inc.,* supra at 1020. In addition, there have been no temporary or permanent transfers between the maintenance employees and engineering employees in Metrology, Validation, or Engineering Operations.

The record reflects two instances where production employees have transferred to maintenance, one in April 2001 and one in August 2002. In both instances, the employees

involved had to apply for the maintenance positions and indicate they had the appropriate maintenance qualifications, and then they had to go through the interview process like other applicants. While neither employee had a Class 1 Stationary Engineering license when they were hired, they were expected to obtain this license. One employee has since received the license while the other is studying to obtain the license. These two employees were not hired because they possessed the necessary maintenance skills by virtue of their positions as production employees, but rather because they met the separate, independent requirements for maintenance mechanics. These two transfers out of 116 production and maintenance employees over the period of almost 2 years is insignificant and does not indicate a substantial community of interest. *Aerospace Corporation*, 331 NLRB 561, 571 (2000). Permanent transfers are also generally a less significant indication of employee interchange than temporary transfers. *Franklin Mint Corporation*, 254 NLRB 714 (1981). The significance of these two transfers is further diminished by the fact that they were voluntary. *Deaconess Medical Center,* 314 NLRB 677 fn. 1 (1994); *Red Lobster*, 300 NLRB 908, 911 (1990).

Manufacturing Director Mark Bell testified that if maintenance and production employees are performing their regular functional work, there is only "limited" interaction between the two groups. Bell testified that production employees would have more interaction with maintenance employees when maintenance employees are responding to alarms. Maintenance employees may notify production employees of the necessity to evacuate the area or to shut down certain machinery in order to make repairs. Maintenance employees may also have discussions with the production employees over the possible cause of a breakdown or malfunction, such as when investigating DIRs or performing work requests. Such tangential contact, however, does not establish a community of interest among these employees. *Aerospace Corp*., 331 NLRB 561, 572 (2000). The separate identity of the maintenance employees is also not lost by the fact that they spend the majority of their time in production areas or on production machinery, work in close coordination with production employees, or perform some production tasks.

Sundor Brands, Inc., 334 NLRB No. 100, slip op at 5 (2001); *Grace Chemical Co*., supra at 1341. Further, the level of interaction between maintenance employees and production employees when working together on these functions or when discussing problems with machinery, does not mandate a combined unit. See *Capri Sun, Inc*., 330 NLRB 1124 (2000).

Finally, maintenance employees do have contact with the production and engineering employees who participate in the Emergency Response Team and the Site Safety committee. The record does not reflect how many production employees are on these two teams or committees. The Emergency Response Team is comprised of employees who are trained to respond to minor emergencies on site, such as a medical emergency or a chemical spill. The record does not reflect specifically what the Site Safety committee does. The fact that maintenance, production, and engineering employees serve together on various committees, and even attend training together, does not establish a community of interest between these groups requiring their inclusion in the petitioned-for maintenance unit. *Ore-Ida Foods, Inc*., supra at 1017.

There is no interchange between the maintenance employees and the engineering employees in Metrology, Validation, or Engineering Operations. Maintenance employees do not calibrate or validate equipment, nor do they create drawings, as do the CADD technicians in Engineering Operations. There is no evidence engineering employees in these departments have performed maintenance work. Maintenance employees do have some contact with metrology employees if help is needed to reinstall a piece of machinery that has been calibrated, though the record does not reflect the frequency of this contact. The record does not reflect the nature or frequency of the contact between maintenance employees and engineering technicians in Validation, or between the maintenance employees and the CADD technicians in Engineering Operations, other than occasionally requesting a drawing which the CADD technicians would supply.

D. Separate Supervision

The functional duties of the maintenance employees, the vast majority of which are never performed by production or engineering employees, are carried out under separate supervision both at the immediate supervisor level and at the manager level. Maintenance employees are hired by the maintenance supervisors, with input from the Facilities Manager John Farmer who makes the final decision. The maintenance employee's immediate supervisor prepares the employee's evaluation, which is also reviewed by the Facilities Manager John Farmer. Maintenance supervisors are also responsible for disciplining employees under the progressive disciplinary system.

Production employees receive their appraisals from production supervisors. Production supervisors and the lead supervisor or the department manager make the hiring decisions in the production departments. Production employees are also disciplined by production supervisors. There is no evidence of any production employee being evaluated or disciplined by a maintenance supervisor. Engineering employees are likewise hired, evaluated and disciplined by separate engineering supervisors.

Manufacturing Director Mark Bell testified that maintenance employees do not report to a production supervisor when they enter the production area to perform maintenance work. Rather, Bell testified that the production supervisor "assumes" the responsibility to "direct" the maintenance employees on "what will be done when" on the repairs. The record does not reflect what this direction consists of, or that such direction is anything more than the routine identification of machines that need repair. The identification by production supervisors of what repairs need to be done, or even prioritizing the order of the repairs to minimize the effect on production, does not establish common supervision. *Yuengling Brewing Co*., 333 NLRB No. 104, slip op at 2 (2001); *Ore-Ida Foods, Inc.*, supra at 1019. Neither the production supervisors nor the engineering supervisors discipline or evaluate the maintenance employees.

E. Working conditions, Hours, Fringe Benefits, and Wages

Non-exempt employees, including maintenance, production and engineering employees, are subject to the same basic policies and procedures. All employees receive the same unscheduled 30-minute lunch period and two 15-minute breaks. All employees fill out time sheets recording their hours which are signed by their immediate supervisor. All employees have the same annual evaluation, though the evaluations are prepared by the employee's immediate supervisor. All non-exempt employees receive the same benefits including vacation, sick leave policy, jury duty policy, military leave, health insurance, and life insurance. They are all subject to the same progressive disciplinary system, and the same layoff and recall policies. All employees receive free parking, fitness center subsidies, and tuition reimbursement.

Maintenance employees, however, do have some working conditions not shared by other employees, including Engineer on Duty assignments requiring the employees to go into various buildings to respond to requests for repairs and to handle breakdowns. Maintenance employees also have a separate maintenance trailer where they have their lockers that is not used by any other group of employees. Maintenance employees also have a maintenance shop that is not accessible to most of the production employees. Most of the maintenance employees wear a uniform which consists of a blue shirt and blue pants, with the Employer's name on the shirt. Maintenance employees do put on a separate gown over their uniform when entering a clean room to prevent the spread of bacteria, just as the production employees do. The Metrology employees do not wear uniforms. Managing Director Jim Miller testified the engineering employees have uniforms, but the record does not reflect exactly what these uniforms are. Of the 92 production employees, only the 5 materials handlers wear uniforms, and these uniforms are the same as those worn by the maintenance employees.

Maintenance employees also have different shifts than the production employees. The three maintenance shifts are from 6 a.m. to 2:30 p.m., 2 p.m. to 10:30 p.m., and 10 p.m. to 6:30 a.m. Exhibit 10 lists the production shifts as 7 a.m. to 3:30 p.m., 3 p.m. to 11:30 p.m., and 11 p.m. to 7:30 a.m. The maintenance employees and their supervisors determine their starting

times, which are not dependent on the starting times of the production employees. Also, some of the production employees work three 12-hour shifts and some four 12-hour shifts. The maintenance employees are not scheduled for 12- hour shifts.

Maintenance employees also have significantly higher wage rates than the vast majority of the production and engineering employees. The grades for wages range from 54 to 60. There are no maintenance positions below a grade 58. The maintenance mechanic, the entry-level maintenance position, is a grade 58. The wage range for this grade is $16.88 to $25.32. Senior maintenance mechanics, which is the classification of most of the maintenance employees, are a grade 59 ranging from $18.57 to $27.86. The three lead maintenance mechanics are a grade 60, which ranges from $20.43 to $30.64.

Production employees, by contrast, have significantly lower wage rates. Most of the production employees in Materials Management, the four materials handlers, are only a grade 54, which ranges from $11.53 to $17.30. The one senior materials coordinator is a 57 which ranges from $15.35 to $23.02. In the two Production Process departments and Production Support, the assistant process technicians are only grade 54. The majority of the production employees in Refacto AF, Manufacturing, and Product Support are the process technicians who are a grade 56, which ranges from $13.95 to $20.93. This is three grades lower then the average grade of the maintenance employees of 59. Senior process technicians are a grade 57. The only two production employees who have a grade higher than 57 are the Tech Trainer II employees who are a grade 59. Thus, the majority of the production employees are a grade 56, making between $13.95 to $20.93, while the majority of the maintenance employees are a grade 59, making between $18.57 to $27.86.

The majority of the employees in the engineering departments also have lower wage rates. The eight senior engineering technicians in the Metrology, Validation, and Engineering Operations departments are a grade 58. The engineering technicians in these departments are only a grade 57 which ranges from $15.35 to $23.02. While the majority of the maintenance

employees have a grade of 59 or higher, the only engineering employee with a grade higher than 58 is the one metrology lead who is a grade 60. The higher wage rates of the maintenance employees support a finding that the maintenance employees constitute a separate unit. See *Sundor Brands, Inc.*, supra slip op at 4.

F. Bargaining History

As previously noted, three subsidiaries of the parent corporation are unionized, and these three units are comprised of production, maintenance, and engineering units. The record fails to reflect whether these three subsidiaries use the same production processes used by the Employer at the St. Louis plant. There is no history of bargaining at the St. Louis facility, nor is the Employer's only other facility in Massachusetts unionized. No union is seeking a broader unit at the Employer's St. Louis facility. The fact that a combined production, maintenance, and engineering unit exists at other subsidiaries, or at other plants in the industry, does not destroy the homogeneity of the maintenance employees at this facility. See *Grace Chemical Co*., supra at 1341; *Heublein, Inc*., 119 NLRB 1137 (1958).

G. Conclusion

While there is some functional integration among the employees, the maintenance employees have distinct duties, are separately supervised, have a higher skill level than most of the other employees, and have significantly higher wage rates. There is little interchange between the maintenance employees and other employees, and the number of transfers between maintenance employees and other employees is insignificant. Maintenance employees are only assigned to perform maintenance work, and the core functional duties of the maintenance employees and the production employees are strictly segregated. Further, there is no history of bargaining in a more comprehensive unit at this facility. Accordingly, I find that under a traditional community of interest analysis, the petitioned-for unit of maintenance employees constitutes a clearly identifiable, functionally distinct group and constitutes an

appropriate unit. Therefore, I will conduct an election among the Employer's maintenance employees.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.[3]

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6*)* and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance employees employed by the Employer at its St. Louis, Missouri facility, EXCLUDING office clerical employees, guards and supervisors[4] as defined in the Act and all other employees.

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[3] The parties stipulated that the Employer, a Delaware corporation, with its principal offices located in Madison, New Jersey, and a manufacturing facility located in St. Louis, Missouri, is engaged in the manufacture and non-retail sale of biologicals for hemophilia medicines. During the last 12 months, which period is representative of the Employer's operations, the Employer purchased and received at its St. Louis, Missouri facility goods valued in excess of $50,000 directly from points located outside the State of Missouri. The parties further stipulated that the Employer is engaged in commerce within the meaning of the Act.

[4] The parties stipulated the following individuals are supervisors under Section 2(11) of the Act and should be excluded from the unit: Director of Manufacturing Mark Bell, Facilities Manager John Farmer, Maintenance Shift Supervisor Ron Walchshuster, Maintenance Shift Supervisor Roger Anderson, Maintenance Shift Supervisor Mike Howard, Associate Director Chuck Conklin, and Director of Engineering Services Steve Miller. Accordingly, and in agreement with the parties, I shall exclude these individuals from the unit.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Brewers and Malsters, Local Union No. 6, affiliated with the International Brotherhood of Teamsters, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **April 2, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **April 9, 2003.** The request may **not** be filed by facsimile.

Dated November 12, 2003
at Saint Louis, Missouri

Leo D. Dollard, Acting Regional Director, Region 14
National Labor Relations Board

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